IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.1.2005

CORAM

THE HONOURABLE Mr.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.35899 of 2004

Muthulakshmi ... Petitioner

Vs.

1. State
   rep. by Inspector of Police
   Dharmapuri Town Police Station
   Dharmapuri.

2. The Regional Medical Officer,
   Govt. General Hospital,
   Dharmapuri. ... Respondents

* * *

Petition filed under Section 482 of Cr.P.C., praying for the relief as stated therein.

* * *

For petitioner : Mr.R.Sankarasubbu
For respondents : Mr.K.Duraisamy,
Public Prosecutor,
High Court, Madras.

* * *

O R D E R

This Criminal Original Petition has been filed praying to direct the second respondent to furnish a copy of the postmortem report of the deceased Munusamy Veerappan in connection with Crime No.1221/04 on the file of the first respondent to the petitioner.

2. The grievance of the petitioner is that her deceased husband, viz., Munusamy Veerappan and three others were killed by the STF at Papparapatti near Dharmapuri on 18.10.2004 at about 10.45 pm and the second respondent has conducted the postmortem on the body of her deceased husband Veerappan on 19.10.2004; that the Human Rights Organizations, journalists and public have suspected the death of her husband and three others. The fact finding

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team has collected many incriminating materials with regard to her husband's death.

3. The petitioner would further submit that the Tamilnadu Government has ordered an RDO enquiry and she appeared for the enquiry on 01.11.2004 as she had to submit her explanation before the RDO because she suspected her husband's death. However, she could not submit her further explanation effectively since the postmortem report was not furnished to her. The petitioner has also submitted that she gave her requisition to the second respondent for the issuance of the postmortem report, but the second respondent refused to issue the same. Hence the petition.

4. On the part of the respondents, the Deputy Superintendent of Police, Prohibition & Enforcement Wing, Dharmapuri, has filed a counter affidavit narrating the facts of the case and would also cite Rule 591 of the Madras Police Standing Orders, which reads:

> "Postmortem and Wound Certificates:- (1) The original postmortem certificate has to be sent by the Medical Officer direct to the Magistrate concerned in a sealed cover, the Police being given a copy of it immediately the examination is over. In order to facilitate this procedure, the Police should specify in their requisition for postmortem examination the Magistrate to whom the postmortem certificate should be sent. (2) Wound Certificates will be delivered to the Police."

5. It is further stated in the counter affidavit that as per the Standing Orders, the petitioner is not entitled to a copy of the postmortem certificate and the same would be directly sent to the Magistrate in a sealed cover; that based on the complaint preferred by the S.P., STF, Erode, an F.I.R. has been registered and the Revenue Divisional Officer, Dharmapuri is conducting the enquiry into the death of the petitioner's husband and his associates and the same is in progress. Hence, under these circumstances, the petitioner is not entitled to the copy of the Postmortem certificate which would hamper the enquiry and investigation. Thus, the respondents would seek to dismiss the petition as devoid of merits.

6. During arguments, the learned counsel appearing on behalf of the petitioner, besides reiterating the pleadings of the above criminal Original Petition, would submit that the petitioner is the widow of the deceased Veerappan who along with three others were shot dead in an encounter in

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the forest; that the petitioner is very much in doubt regarding the story being told by the police regarding the manner in which the death of her husband and others have been brought forth and serious doubts have been raised regarding the manner in which her husband has been done to death and therefore in order to ascertain the real cause of death and the manner in which the death had been carried out by the Special Task Force, the learned counsel would lay emphasis that she has the right to know the facts and would cite from the Tamil Nadu Right to Information Act 1997 (Act 24/97) wherein in the preamble itself it has been mentioned:

> "An Act to make provision for securing the right to information in the State of Tamil Nadu and for matters relating thereon"

7. The learned counsel would then cite Section 176 of the Code of Criminal Procedure regarding the Magisterial Enquiry to be held into the death of such encounters and in fact there has been an enquiry by the Revenue Divisional Officer and without being able to equip herself with the details regarding the death of her husband, the petitioner would say that she is in need of the Post Mortem Certificate to demonstrate before the authorities concerned that it was a fake encounter in which her husband has been done to death.

8. The learned counsel would further argue to the effect that under Section 74 of the Evidence Act, the Post Mortem Certificate the copy of which is sought to be issued in favour of the petitioner is a 'public document' and there is no secrecy or privacy in the issuance of the copy of the said document and therefore it could very well be issued in favour of the petitioner. He would then cite Article 19(1)(a) of the Constitution of India and would exhort that the petitioner has got the freedom to express her views particularly regarding the death of her husband and therefore she is in dire necessity of the copy of the Post Mortem Certificate. The learned counsel would then cite Section 123 of the Evidence Act and would say that the Head of the Department concerned can permit issuing the copy of the Post Mortem Certificate.

9. The learned counsel would also cite a judgment of the Honourable Apex Court in THE STATE OF U.P. vs. RAJ NARAIN AND OTHERS reported in (1975) 4 SCC 428 wherein it has been held:

> "In a government of responsibility like ours,

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where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption. To justify a privilege, secrecy must be indispensable to induce freedom of official communication or efficiency in the transaction of official business and it must be further a secrecy which has remained or would have remained inviolable but for the compulsory disclosure. In how many transactions of official business is there ordinarily such as secrecy? If there arises at any time a genuine instance of such otherwise inviolate secrecy, let the necessity of maintaining it be determined on its merits."

10. The learned counsel for the petitioner would also cite a judgment of the Honourable Apex Court in UNION OF INDIA vs. ASSOCIATION FOR DEMOCRATIC REFORMS AND ANOTHER reported in AIR 2002 SC 2112 wherein the Honourable Apex Court referring to its earlier judgment delivered in DINESH TRIVEDI M.P. AND OTHERS vs. UNION OF INDIA AND OTHERS reported in (1997) 4 SCC 306, would hold:

"The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant of Civi and Political Rights which is as under:-

(1) Everyone shall have the right to hold opinions without interference.

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> (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

On such arguments, the learned counsel for the petitioner would ultimately pray to grant the relief as prayed for in the above criminal original petition.

11. On the contrary, on the part of the learned senior counsel and the Public Prosecutor, High Court, Madras, he would question the entitlement of the petitioner for the copy of the Post Mortem Certificate particularly at a stage wherein the case registered is under investigation. The learned Public Prosecutor would seek to know the purpose and the object sought to be achieved by getting a copy of the document sought to be issued. Regarding entitlement, the learned Public Prosecutor would cite Rule 591 of the Madras Police Standing Orders, which is extracted in paragraph 4 supra and would state that as per this Rule, 'the original Post Mortem Certificate has to be sent by the Medical Officer direct to the Magistrate concerned in a sealed cover, the police being given a copy of it immediately the examination was over .... Wound Certificate will be delivered to the Police'.

12. Citing the above Rule, the learned Public Prosecutor would categorically state that the second respondent herein can only send the Post Mortem Certificate to the concerned Court direct. At this juncture, the learned Public Prosecutor would cite a Full Bench judgment of this Court delivered in SELVANATHAN @ RAGHAVAN AND 9 OTHERS vs. STATE BY INSPECTOR OF POLICE, MADRAS AND OTHERS reported in 1988 L.W. (Crl.) 503 = 1989 (1) MWN (Crl.) 117 wherein the Full Bench of this Court has held:

> "... the Rules cannot be construed to have given any right to the parties to obtain copies against the provisions of the Code. At any rate, R.339 (of the Criminal Rules of Practice) does not postulate that the accused is entitled to copies at any stage, i.e. even before the forwarding of the police report to the Magistrate, on payment of prescribed charges."

It has been further held therein:

> ".... For all the foregoing reasons, we hold that

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accused are not entitled to certified copies of the inquest report, statements recorded under S.174 of the Code, Post-mortem certificate, requisition given by the police officers to the Medical Officer for conducting post-mortem and medically treating the injured, rough sketch of the scene place, and observation mahazar prepared by the investigating officer, before the final report is forwarded to the Magistrate, as contemplated under S.173(2) of the Code."

On such arguments, the learned Public Prosecutor would pray to dismiss the above Criminal Original Petition since the same is without merit.

13. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing hearing the learned counsel for the petitioner and the learned Public Prosecutor, High Court, Madras and senior counsel, what this Court could assess is that the petitioner is the wife of Veerappan who was killed along with three others by the Tamil Nadu Special Task Force, no mention need be made that he was wanted in many number of cases ranging from murder to forest offences. The petitioner stating that there are considerable doubts in the manner in which the Task Force claimed that her husband was done to death along with three others in an encounter, but he was secured along with others and keeping under the custody of the police for two or three days illegally, tortured and ultimately killed, as it comes to be argued on the part of her counsel and therefore in order to project the proper case before the Human Rights Commission against the concerned authorities as against the fake encounter, she has sought for the copy of the Post Mortem Certificate which would tell tales of the fake encounter perpetrated against her husband.

14. The learned counsel would cite from various Sections of law and even from Article 19(1)(a) of the Constitution of India which generally pronounce the right to information by citizen; that it is a public document that parties are entitled to normally get the copies of the documents and that freedom every citizen of this country is enshrined with. But, all these rights generally declared either in favour of citizens of this country or parties to the prosecution or litigation are only subject to certain reasonable restrictions either imposed by law or even by Rules, conventions, precedents etc. and one such restriction that is imposed regarding the issuance of a copy of the Post Mortem Certificate, which is the subject

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matter of the above petition, is Rule 591 of the Madras Police Standing Orders which is positive to the effect that 'originally the Post Mortem Certificate has to be sent by the Medical Officer direct to the Magistrate concerned in a sealed cover, the police being given a copy of it immediately after the examination is over' thus setting the procedure as to the issuance of the Post Mortem Certificate and therefore revoking such procedures established by law, this Court or any other court for the matter is not entitled to order to issue the copy of the Post Mortem Certificate particularly when the investigation into the case registered regarding the death in encounter by the respondent Police is still pending finality of decision by the police themselves and since the field is occupied entirely by the respondent, as it is held on the part of the Honourable Apex Court in general regarding any criminal case registered which is under investigation that the Courts are little or no chance to order such applications, citing the general provisions of law or even the Constitutional provision which would set the outer line without specifying anything which has to be decided in the manner provided under the law on the specific subject and the propositions held by the upper forums of law do not help the case of the petitioner and therefore this Court is only inclined to dismiss the above Criminal Original Petition and hence the following order:

In result, the above criminal original petition does not merit acceptance but becomes liable only to be dismissed and is dismissed accordingly.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Inspector of Police
   Dharmapuri Town Police Station
   Dharmapuri.

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2. The Regional Medical Officer,
   Govt. General Hospital,
   Dharmapuri.

+1cc to The Public Prosecutor, High Court, Madras Sr 1789

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